

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

4 Robert G. Kaiser,	Case No. 2:24-cv-00646-CDS-MDC
5 v.	Ordering Granting Defendant's
6 Plaintiff	Motion to Dismiss
7 Wells Fargo Clearing Services, LLC,	[ECF No. 41]
8 Defendant	

10 Plaintiff Robert Kaiser, proceeding pro se, seeks to recover for disability discrimination,
11 age discrimination, and hostile work environment claims against defendant Wells Fargo
12 Clearing Services, LLC (“WFCS”). Kaiser filed a second amended complaint on February 27,
13 2025 (ECF No. 34), which WFCS moves to dismiss (ECF No. 41). Kaiser had until April 7, 2025,
14 to respond to the motion¹ but failed to do so. Therefore, I ordered Kaiser to show cause why his
15 complaint should not be dismissed for failure to timely respond to the motion to dismiss. ECF
16 No. 46 (citing *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (affirming dismissal of pro se
17 plaintiff’s claim for failure to respond to motion to dismiss). In the alternative, if Kaiser intended
18 to continue pursuing his claims, he was ordered to attach his response to WFCS’s motion to
19 dismiss to his response to the show-cause order. ECF No. 46 at 2. As of the date of this order,
20 Kaiser has not communicated with the court in any way, so I grant the defendant’s unopposed
21 motion to dismiss and close this case.

22 I. Legal Standard

23 Unlike a motion for summary judgment, a district court is not required to examine the
24 merits of an unopposed motion to dismiss before granting it. *Ghazali*, 46 F.3d at 54 (Ninth
25

26 ¹ See ECF No. 42; see also Local Rule 7-2(b) (stating that the deadline to file and serve any points and
authorities in response to the motion—other than summary judgment—is fourteen days after service of
the motion).

1 Circuit refusing to extend to motions to dismiss the requirement that a district court examine
 2 the merits of an unopposed motion for summary judgment before summarily granting it
 3 pursuant to a local rule). Thus, a district court may properly grant an unopposed motion to
 4 dismiss under a local rule. *Id.* at 53. Local Rule 7-2(d) provides that the failure of an opposing
 5 party to file points and authorities constitutes that party's consent to the granting of the motion.
 6 L.R. 7-2(d).

7 Before granting an unopposed motion to dismiss, the court must weigh the following
 8 factors: "(1) the public's interest in expeditious resolution of litigation; (2) the court's need to
 9 manage its docket; (3) the risk of prejudice to the defendant; (4) the public policy favoring
 10 disposition of cases on their merits; and (5) the availability of less drastic sanctions." *Ghazali*, 46
 11 F.3d at 53 (quoting *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986)).

12 II. Discussion

13 The first two factors, the public's interest in expeditiously resolving this litigation and
 14 the court's interest in managing its docket, weigh in favor of dismissing Kaiser's claims against
 15 WFCS. Kaiser's failure to respond to the motion to dismiss slows the resolution of this litigation
 16 by delaying the briefing schedule, which in turn interferes with the court's ability to manage its
 17 docket. *T.G. v. Bd. of Trs.*, 2022 U.S. Dist. LEXIS 133058, *5 (D. Mont. July 6, 2022) ("The Court
 18 cannot manage its docket if Plaintiffs do not respond to motions. . . [t]his case [] cannot proceed
 19 if Plaintiffs fail to participate."); *see also Yourish v. Cal. Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999)
 20 ("[D]ismissal . . . serves the public interest in expeditious resolution of litigation as well as the
 21 court's need to manage its docket because Plaintiffs' noncompliance has caused the action to
 22 come to a complete halt, thereby allowing Plaintiffs to control the pace of the docket rather than
 23 the court.") (quoting *Ash v. Cvetkov*, 739 F.2d 493, 496 (9th Cir. 1984)).

24 The third factor also weighs in favor of dismissing Kaiser's claims. There is no apparent
 25 risk of prejudice to defendants by dismissing the action at this time; indeed, defendant filed the
 26 instant motion to dismiss.

1 The fourth factor, the public policy favoring disposition of cases on their merits, always
 2 weighs against dismissal. *See Hernandez v. City of El Monte*, 138 F.3d 393, 399 (9th Cir. 1998) (“[T]he
 3 public policy favoring resolution on the merits clearly counsels against dismissal.”) (citation
 4 omitted); *Pagtalunan v. Galaza*, 291 F.3d 639, 643 (9th Cir. 2002) (“Public policy favors disposition
 5 of cases on the merits. Thus, this factor weighs against dismissal.”). However, this factor is not
 6 weighty here; the Ninth Circuit has “recognized that this factor ‘lends little support’ to a party
 7 whose responsibility it is to move a case toward disposition on the merits but whose conduct
 8 impedes progress in that direction.” *In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 460 F.3d 1217,
 9 1228 (9th Cir. 2006) (quoting *In re Exxon Valdez*, 102 F.3d 429, 433 (9th Cir. 1996)). Here, Kaiser
 10 did not file a response opposing the motion, making resolution on the merits difficult, if not
 11 impossible. *Cf. Johnson v. Top Inv. Prop. LLC*, 2018 U.S. Dist. LEXIS 140051, at *17–18 (E.D. Cal. Aug.
 12 17, 2018) (“Although public policy generally favors the resolution of a case on its merits, as here,
 13 a defendant’s failure to appear and defend against a plaintiff’s claims makes a decision on the
 14 merits impossible.”) (citation omitted). And “a case that is stalled or unreasonably delayed by a
 15 party’s failure to comply with deadlines . . . cannot move forward toward resolution on the
 16 merits.” *In re PPA*, 460 F.3d at 1228.

17 Last, with respect to whether less drastic measures have been considered, the court has
 18 determined that dismissal without prejudice is proper here. *See Ash*, 739 F.2d at 496 (noting that
 19 dismissal without prejudice is considered a lesser sanction and therefore is a “more easily
 20 justified sanction for failure to prosecute”); *see also Childers v. Arpaio*, 2009 WL 3756487 at *2 (D.
 21 Ariz., Nov. 5, 2009) (noting that dismissal without prejudice imposed a “less drastic sanction”
 22 compared to dismissal with prejudice). Moreover, Kaiser was cautioned that his failure to
 23 respond in some way would result in dismissal of his claims. ECF No. 46 at 2. Yet he did
 24 nothing. Thus, because dismissal is permitted under the local rules, I grant WFCs’s unopposed
 25 motion to dismiss.

1 III. Conclusion

2 It is therefore ordered that Wells Fargo Clearing Services' motion to dismiss [ECF No.
3 41] is GRANTED. The Clerk of Court is instructed to enter judgment accordingly and to close
4 this case.

5 Dated: May 13, 2025

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7 Cristina D. Silva
United States District Judge

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